

# **MONITORING DETENTION BY THE POLICE –**

## **EXPERIENCES WITH CIVILIAN OVERSIGHT OF LAW ENFORCEMENT FORCES<sup>1</sup>**

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Even following the political changes in 1989, the Hungarian police continued to resist making its activities more open to the public eye. The practice that only officials directly subordinated to the National Chief of Police could provide information to the public survived and was even confirmed by the orders of the National Police Chief. The civilian oversight of police activities, as practiced by the parliamentary Committee for Internal Affairs, has been rather formal. The two organizations empowered to control the police, the Minister of Interior and the public prosecutor's office, have also remained secrecy-loving. But even in case of enacting the Act on Police<sup>2</sup>, after only a long dispute did the police agree to including in the bill that data gathered by secret means which is not used for initiating a criminal procedure, can be examined by a public prosecutor. It is worth mentioning that in 1993 following the act establishing the institution of ombudsman in this country, the police insisted that the ombudsman – elected by a two-thirds majority of the Parliament – should apply for the consent of the National Chief of the Police – a civil servant appointed by the Government – if she/he wanted to examine cases related to the operation of the police. (This provision was deleted from the law following the 1994 general elections.<sup>3</sup>)

### **A breakthrough**

In this context, the visit of the Committee for the Prevention of Torture (CPT) to Hungary in the fall of 1994 was a real breakthrough. According to the report issued by the CPT: „Some delay was experienced in gaining access to a detained person whom the authorities considered to be particularly dangerous. On other occasions, the information was disclosed „after the timely intervention of the Government's liaison officer”, despite the fact that „according to Art. 8 para 2 (d) of the Convention, the State party is obliged to provide the CPT with information available to that Party which is necessary for the Committee to carry out its task.”<sup>4</sup> It seems that some officers simply did not want to believe that civilians, even more, foreigners had been allowed to enter police detention facilities and contact detainees.

The Hungarian Helsinki Committee (HHC) jointly with the Constitutional and Legislative Policy Institute (COLPI) started its Police Cell Monitoring Program in February 1996. The Program was funded by the Open Society Institute, Budapest and the Hungarian Soros Foundation. The Committee was encouraged to submit a proposal to the Minister of Interior by a statement of the Minister before the Parliament's Human Rights Committee. The Minister who belonged to the liberal party, Alliance of Free Democrats, announced his support to a civilian oversight of organizations supervised by the Ministry of Interior.

The Police Cell Monitoring Program was preceded by a fact-finding mission conducted by three NGOs (HHC, Center for the Protection of Human Rights – Hungary (MEJOK), Veritas

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<sup>1</sup> An edited version of the presentation at the Central European Seminar on the Prevention of Torture, Budapest, 18-19 June 1998

<sup>2</sup> Act XXXIV of 1994

<sup>3</sup> Act LIX of 1993, Art. 18 para. 7, amended by Act LXV of 1995, Art. 33.

<sup>4</sup> Report of the CPT on Hungary, 1994, p. 15. para. 7

Foundation, which works for the rehabilitation of torture victims) to the alien police deportation camp in Kistarcsa in early 1995. Both the fact finding mission and the ministerial statement marked a change in attitude. Earlier, the Kistarcsa camp had been closed to public eyes. The press was sometimes invited to press conferences orchestrated by the police.

The framework of the Police Cell Monitoring Program was outlined by a circular issued on February 22, 1996 by the Deputy Head of the Police responsible for all police detention facilities in this country. Upon this agreement, members of monitoring groups, possessing a letter of authorization, were entitled to enter police facilities any time, day and night, without previous announcement, to interview detainees upon their agreement, to fill out questionnaires with them, and to use tape recorders. Medical doctors belonging to the monitoring group had the right to conduct medical check-ups with the consent of detainees, and look at their medical records. However, the monitors were requested not to intervene with the criminal procedure or provide legal counselling to the detainees. In order to use a camera or a video recorder, they needed to apply for a special permit from the police.

According to the agreement, the monitoring activity meant, inter alia: „the oversight of the physical conditions of the buildings, of the area of buildings where detainees were kept, the treatment of detainees and the conditions of detention, the implementation of detainees’ rights, the way their physical and special – such as medical and hygienic – needs were satisfied, and the quality of their relationship with their guards.”<sup>5</sup> The permissions issued to the monitoring teams were limited in time and space as they expired by the first semester of the 1996 year and were limited to Budapest and four counties. Later the permission was prolonged until the end of the year 1996 and four other counties were included in its geographical scope. That means that police jails were monitored in Budapest and its surroundings (Pest county) from February to December 1996, while altogether eight counties of Hungary were monitored for almost half-year each.

Monitoring teams usually had three members, headed by an attorney and generally included a physician. Altogether 43 persons participated in the Police Cell Monitoring Program. During 1996, monitoring teams conducted 216 visits to police jails, made 218 interviews with detainees and had 473 questionnaires filled out by detainees. In the second half-year of 1996, an additional questionnaire was prepared for police officers on duty in jails. 40 such completed questionnaires had been received by monitoring teams. Monitoring teams sent reports following each visit to the Hungarian Helsinki Committee, and graver problems were immediately signaled to the National Police Headquarters by the HHC. The final report based on the 1996 experiences of the Police Cell Monitoring Program was published in the form of a book titled *Punished Before Sentence* in Hungarian (1997) as well as in English (1998).

## **Legal debate on civilian oversight**

Despite of the agreement and the authorization given by the Deputy Head of the National Police, the legal basis of the monitoring program had been debated from the very beginning. In fact, the whole program was based on one single provision of the Ministerial Decree issued in 1995 regulating police detention facilities.<sup>6</sup> The Decree gives a list of persons the detainees may communicate with, without police supervision. These are the defense lawyer, the public prosecutor, the UN Human Rights Commission, the European Commission and Court of Human Rights, the CPT and „organizations entitled by Hungarian law to protect human rights”. This provision, however, could not be given a clear interpretation, because without the exception of the ombudsman (who has the right to control police jails based on another provision of the same decree<sup>7</sup>), there is no organization *entitled by law* to protect human and

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<sup>5</sup> quotation from the circular of the National Police Chief

<sup>6</sup> Decree of the Minister of Interior no. 19/95 (December 13) Art. 3 para. 4 (b)

<sup>7</sup> Decree of the Minister of Interior no. 19/95 (December 13) Art. 35 para. 1 (b).

citizens' rights. The General Prosecutor's Office interpreted this taxation as containing all organizations having the right to monitor police jails, consequently, the prosecution argued, the police authorization to the HHC to enter police jails lacked legal basis. At the end of 1996 the license for the program expired, and the HHC wished to renew its agreement with the police. As the previous leadership of the police was replaced by new persons, they asked for the official opinion of the General Prosecutor on the Police Cell Monitoring Program. The Deputy of the General Prosecutor responsible for criminal investigation confirmed his previous opinion that the license to the HHC to monitor police cells is not legal. At the same time he suggested to amend the Decree of the Minister of the Interior in order to create the legal background for civilian oversight programs.

Contrary to the opinion of the General Prosecutor's Office, the Hungarian Helsinki Committee argued that, based on its statutes of association, which are registered by the court, it is mandated to protect and monitor human rights guaranteed by the Helsinki Final Act and the European Convention for Human Rights. Furthermore, the HHC recalled that in the draft of the bill on asylum prepared by the Hungarian government (passed in this form in December 1997), the criteria set out for safe countries of origin include the observance of the right of domestic and international human rights NGOs to monitor the enforcement of human rights.<sup>8</sup> The same approach was supported by the Ombudsman, who concluded that civilian monitoring initiated by the police itself in Heves county, and blocked by the public prosecutor, was legal and constitutional.

The Minister of Interior submitted a draft amendment to the Decree, according to which „detainees can contact members of external organizations under the necessary control”. In his argument for the amendment the Minister referred to the Art. 43 (1) of Recommendation no. R/87/3. of the Council of Europe's Council of Ministers. The recommendation stipulates that „prisoners shall have the right to contact members or representatives of external organizations, but this right is subordinated to the requirements of safety and order”. The General Prosecutor rejected the draft, pointing out that the recommendation concerned convicts and not those in pre-trial detention. He referred to the Art. 92 (2) of the same Recommendation, which concerns who are kept in pre-trial detention. According to this article, the right of detainees in pre-trial detention to contact external organization can be restricted, as long as it is justified by the interests of the criminal justice system. In the Prosecutor's opinion, contact with external organizations without special guarantees and legal authorization might violate the function of the criminal procedure. Due to the resistance of the Public Prosecutor, the Minister of Interior gave up on the amendment of the Decree.

A less sophisticated reason why the Public Prosecutor so severely opposed the monitoring activities was that earlier it had been the prosecutors' exclusive right and duty to control all closed institutions, such as prisons and detention facilities. This monopoly was broken by the right of the ombudsman and also by the right of organizations like the CPT or the Human Rights Commissions of the UN and the CE, to enter closed institutions. Still, the regular oversight of these institutions had been left untouched. The HHC reported human rights violations in specific police departments where previously public prosecutors had not found any breaches of the law. For example, in the holding cell of Ajka City Police, there was neither natural nor artificial lighting, the detainees were sitting or laying in a dark and unheated cell, on benches covered by dirty rugs. The Hungarian Helsinki Committee's report was dated on April 18, 1996. The County Prosecutor's representative visited the same place three days earlier and he found the conditions in the jail to be in order. Based on the immediate report of the monitoring group, the Deputy Chief of the National Police ordered the cell to be closed down. The public prosecutor later explained the unsatisfactory information in his report by stating that he had already reported about the state of the cell in

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<sup>8</sup> Act CXXXIX of 1997 on Asylum, Art.2 para (d)

January and did not want to repeat his findings all the time.<sup>9</sup> Later, as the monitoring still continued, it was strictly forbidden for the monitoring teams to look at the prosecutors' reports or the jail diaries in which the prosecutor writes his remarks.

The necessity of conducting regular visits to all prison establishments was emphasized by the CPT Report,<sup>10</sup> although supervisory visits by prosecutors had also existed at that time. The CPT pointed out that visiting authorities „should make themselves ‘visible’ both to the prison authorities and staff and to the prisoners themselves”.<sup>11</sup> According to responses given to questionnaires filled out during the Police Cell Monitoring Program, 57.3 percent of 439 respondents claimed „they did not see the prosecutor during their detention” and 49.2 percent had „never heard of the prosecutorial visits and inspections while in jail”. This lack of awareness may be a consequence of the fact that detainees are hardly in the position to identify a visitor as the prosecutor supervising jail conditions.<sup>12</sup>

Having acknowledged that monitoring may strengthen the enforcement of detainees' rights in jails and prisons, the Minister of Interior and the leadership of the police agreed on allowing the monitoring activity to continue. After the effort to amend the ministerial decree had failed, the police leadership decided to sign a written agreement with the HHC. This took place in August 1997 and its content was quite similar to the previous unwritten agreement. The new agreement emphasized more sharply that members of the monitoring teams were required not to cover in their conversations with the detainees topics in connection with the crime which resulted in the criminal procedure and custody. Lawyers representing defendants resident in a certain jail may not participate in the monitoring program in the given jail. After eight months of delay, the agreement made it possible to carry on with the monitoring. Since that time it has not been objected to by the Public Prosecutor.

At present, the monitoring of police cells is less intensive than it was in 1996. That time the aim was to make a general survey about the state of police cells, and to give a concise report of the findings. Nowadays, the aim is to follow up on the changes, if there are any, and to maintain the awareness in the police of being overseen. Certainly, the latter aim means that the police are accustomed to being overseen and during the previous years they have learnt: nothing would happen if the HHC criticized them.<sup>13</sup>

## **Treatment of detainees in police jails**

The survey was conducted between 15 February and 15 December 1996 in Budapest and in nine of the 19 counties of Hungary. The focus of the monitoring was police cells but monitoring teams also paid some visits to detention facilities maintained by the prison authorities. The teams also reported about the number and size of the cells, the hygienic facilities (lavatories and bathrooms), the length of time spent in open air, the number and the quality of medical examinations before and during detention.

According to the rules in force, pre-trial detention should be implemented by the penitentiary authorities, but exceptionally detainees can be kept in police cells. The police insist on detaining a relatively great number of suspects, and judges accept the recommendations of prosecution to detain suspects. The police, for practical reasons, also prefers to keep detainees in police cells, therefore, suspects are regularly kept in police facilities during investigation

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<sup>9</sup> see Punished Before Sentence, Hungarian Helsinki Committee and COLPI, 1998, p. 109

<sup>10</sup> Report of the CPT on Hungary, 1994, p. 55. para. 138

<sup>11</sup> Report of the CPT on Hungary, 1994, p. 55. para. 141

<sup>12</sup> *ibid* at 9. pp. 107-108

<sup>13</sup> Upon the results of the 1998 parliamentary elections, the new government appointed the ex-police chief until 1996 as Minister of Interior, and the leadership of the National Police Headquarters was replaced. Despite of these changes, the Police Cell Monitoring Program has been able to continue.

and then sent over to the prison system after the investigation has been closed. This all means that almost half of those in pre-trial detention are kept in police detention facilities. On December 31, 1996 there were 3,253 persons in police jails while 3,455 were held in prison facilities. The 6708 detainees in pre-trial detention comprise 42 % of 16016 of the total of the prison population. In a European comparison this is a high level of those in arrest.<sup>14</sup> In the present system, pre-trial detention is not substituted by a bail system while other alternative measures, such as the designation of a compulsory residence are also rarely applied. The time-period of pre-trial detention and the time-period one can stay in police detention is presently unlimited. According to the survey of our monitoring groups, 40 % detainees spent more than 3 months in police detention.<sup>15</sup> Experts working on the proposal of the new law on criminal procedure suggested that a European model should be introduced which prohibits pre-trial detention in police detention facilities. This proposal was allegedly opposed by police experts. The internal debate led to a compromise which limited the time for detention in police facilities to a maximum 60 days.<sup>16</sup> The new law which was passed by the Parliament early 1998 will take effect on January 1, 2000.

The present paper does not allow giving a detailed summary of the report from the Police Cell Monitoring Program, as it was published in the above-mentioned book. Here I will focus on one single problem: the ill-treatment of detainees.

Out of 473 detainees who had responded to our questionnaire, 159 (33.6 percent) answered that they had been ill-treated by police officers at least once in their life. 110 of all respondents (23.3 percent) stated that police had used physical force during his arrest, while 96 (20.3 percent) said that they had been ill-treated in an earlier procedure. In the opinion of the police, these data are based exclusively on statements made by detainees, therefore, they are without credit. Undoubtedly, the number of police officers convicted of forced interrogation or ill-treatment during official procedure is quite low in comparison to the above figures. Compared to the annual average of 1,200-1,300 reports on account of forced interrogation or ill-treatment during official procedure, in every third case the criminal investigation is refused, about 80 percent of commenced investigations are terminated, and not more than 50-80 cases per year end with a convicting court sentence. In most cases the investigating bureau of the prosecutor's office will terminate the investigation even if there are medical records to prove the use of force, accepting the standpoint of the police that violence was necessary due to the resistance of the suspect. These type of crimes committed by police officers have a very high latency. Those in pre-trial detention – with very few exceptions – do not file a report for ill-treatment, as they see no chances for success of the report. Without doubt, statements made by detainees remain unproved, but the number of ill-treatments are surely higher than that of convicted police officers.

This assumption is founded on – unfortunately realistic – responses from detainees to a question from the questionnaire used during the monitoring activity, relating to the methods of ill-treatment: 75 respondents stated that during their present arrest, they had been kicked, hit with fists and slapped; 6 persons recounted that their head had been beaten against the ground or the wall; 3 had had a gun pointed at them or had been hit with a gun; 7 told that they had been beaten with either a truncheon, cable, chair-leg or stick. Juveniles, Roma and foreigners particularly often become victims of ill-treatment.

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<sup>14</sup> Not counting those detained in police jails, in Hungary there are 127 for every 100,000 persons in prison. The same number on September 1, 1994 in Austria is 85, France: 90.3, England and Wales: 96, Germany: 83, while in Poland: 162.6, Czech Republic: 181.6, Russia: 443. Source: Council of Europe, SPACE 94,1

<sup>15</sup> *ibid* at 9, p. 16

<sup>16</sup> Act XIX of 1998 on the Criminal Procedure Code, Art. 135 para. 2



The above, based on a wider sample, confirms the CPT, which described 4 cases where forensic reports had documented the injuries. In one case, a criminal investigation was started against the suspected police officers, while the three other cases „the senior police officer had certified that the force which had been used on arrest was lawful and no disciplinary or criminal action had been taken against the police officers concerned.”<sup>17</sup>

## **Present experiences of the Police Cell Monitoring Program**

Since the police cell monitoring program restarted in September 1997, the Hungarian Helsinki Committee has been regularly notifying the police on such anomalies as the delayed delivery of letters, the unlawful hindering of family visits and the unsatisfactory nutrition of detainees. An astonishingly high number of complaints were registered in the case of foreign nationals. Their correspondence with their family members is delayed mainly because of the long translation procedures that were put into practice to have control over the contents of their letters. These detainees are also hindered in consulting their state appointed counsels, for an interpreter is only provided during times of interrogation. In some cases objections were accepted and the HHC was promised a future change of the practice, but mostly the Police refused them on grounds of financial shortage and the lack of personnel.

If the violation of the law cannot be justified neither by a special interpretation of the law nor by the lack of funds or personnel, the police tries to deny what monitors had seen with their own eyes. The case described below is a good example of both the methods of the monitoring activity as well as the police response about discovered violations of rights.

On October 28, 1997 a monitoring team of the Police Cell Monitoring Program had visited the Budapest 6-7<sup>th</sup> district police detention ward, where they heard a loud bang followed by a man's wailing from behind a closed iron door. The detention ward captain opened the door and the police cell monitors saw a handcuffed man whose head was covered with several injuries, being "escorted" to the cell by sergeant József H. and Tibor B. In front of the surprised detention ward captain on duty and the three monitors, H. repeatedly punched the Ukrainian man's head with his fist and shoved him to the ground where Tibor B. kicked him in the stomach several times. At that point the leader of the monitoring team announced that they are the police cell monitoring team of the Hungarian Helsinki Committee. The detention ward captain on duty declared that he could not check the man into detention in such condition. The two police officers hastily left and using the elevator took the handcuffed Ukrainian to the ground floor, to the officer on duty. A few minutes later the associates of the Helsinki Committee followed them. When they saw the Ukrainian again, he was without handcuffs, and the three police officers were trying to press him against the wall next to the coffee dispenser machine. Four other officers were attempting to put handcuffs on another, brown-haired Ukrainian man whom they were trying to push to the ground. When he was already held to the ground, sergeant Viktor E. trampled on the man's head with his left foot. At that point the associates of the Committee asked the officer on duty to inform his superior about the event and to take the necessary steps for the victim's medical treatment. The next day both Ukrainians were released, but the police refused to disclose their personal data. The Hungarian Helsinki Committee filed a report at the investigating office of the Budapest Public Prosecutor's Office for the well-founded suspicion of crime of ill-treatment during official procedure. The head of the metropolitan police, Gen. dr. Attila Berta, in his letter (November 25<sup>th</sup>) to the Hungarian Helsinki Committee denied the ill-treatment and stated that force was applied because the suspects violently attacked the police officers and resisted handcuffing. As a matter of fact, the suspects were already handcuffed before arriving to the police building. It quite unlikely that they were not handcuffed at the time of the arrest and they did not resist as they were taken to the police station, but attacked the police officers when

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<sup>17</sup> Report of the CPT on Hungary, 1994, p. 21, para. 21

already inside the police building. It is also unusual that foreigners arrested because of a violent crime are released immediately, and no warrant of arrest is given out as they did not appear at the interrogation.

The two Ukrainians, also suspected by a violent crime, were most likely allowed to leave the country. Police ill-treatments are very rarely witnessed by uninterested third parties. Even if, however, there are witnesses, the police makes sure that there are no victims.